



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/508,552 | 06/12/2000 | JAY A. BERZOF SKY | 15280-368200 | 8488 |

7590 01/08/2002

STEVEN W PARMELEE
TOWNSEND AND TOWNSEND AND CREW
TWO EMBARCADERO CENTER
8TH FLOOR
SAN FRANCISCO, CA 94111-3834

EXAMINER

STUCKER, JEFFREY J

| ART UNIT | PAPER NUMBER |
|----------|--------------|
| 1648 | |

DATE MAILED: 01/08/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|-----------------|----------------|
| Office Action Summary | Application No. | Applicant(s) |
| | Examiner | Group Art Unit |

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

Responsive to communication(s) filed on 12/5/01

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

Claim(s) 1-69 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) _____ is/are rejected.

Claim(s) _____ is/are objected to.

Claim(s) 1-69 are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on _____ is approved disapproved.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____ Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892 Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948 Other _____

Office Action Summary

The following Office Action is in response to applicant's election filed 12/5/01. After consultation with a Biotech Practice Specialist, the previous restriction requirement is vacated in favor of the instant restriction. The difference between this restriction and the vacated restriction is that each of the specific sequences is treated as a separate group, not as individual species.

Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claims 1-16, 21, 25-37, 42, 46-69, drawn to a composition and method using HIV-1 antigen SEQ ID NO:1, classified in Class 424, subclass 85.6.

II. Claims 1-16, 21, 22, 25-37, 42, 43, 46-69, drawn to a composition and method using HIV-1 antigen SEQ ID NO:2, classified in Class 424, subclass 85.6.

III. Claims 1-16, 21, 25-37, 42, 46-69, drawn to a composition and method using HIV-1 antigen SEQ ID NO:3, classified in Class 424, subclass 85.6.

IV. Claims 1-16, 21, 25-37, 42, 46-69, drawn to a composition and method using HIV-1 antigen SEQ ID NO:4, classified in Class 424, subclass 85.6.

V. Claims 1-16, 21, 25-37, 42, 46-69, drawn to a composition and method using HIV-1 antigen SEQ ID NO:5, classified in Class 424, subclass 85.6.

VI. Claims 1-16, 21, 25-37, 42, 46-69, drawn to a composition and method using HIV-1 antigen SEQ ID NO:6, classified in Class 424, subclass 85.6.

VII. Claims 1-16, 21, 25-37, 42, 46-69, drawn to a composition and method using HIV-1 antigen SEQ ID NO:7, classified in Class 424, subclass 85.6.

VIII. Claims 1-16, 21, 25-37, 42, 46-69, drawn to a composition and method using HIV-1 antigen SEQ ID NO:8, classified in Class 424, subclass 85.6.

IX. Claims 1-16, 21, 23, 25-37, 42, 44, 46-69, drawn to a composition and method using HIV-1 antigen SEQ ID NO:9, classified in Class 424, subclass 85.6.

X. Claims 1-16, 21, 25-37, 42, 46-69, drawn to a composition and method using HIV-1 antigen SEQ ID NO:10, classified in Class 424, subclass 85.6.

XI. Claims 1-16, 21, 25-37, 42, 46-69, drawn to a composition and method using HIV-1 antigen SEQ ID NO:11, classified in Class 424, subclass 85.6.

XII. Claims 1-16, 21, 24-37, 42, 45-69, drawn to a composition and method using HIV-1 antigen SEQ ID NO:12, classified in Class 424, subclass 85.6.

XIII. Claims 1-16, 21, 25-37, 42, 46-69, drawn to a composition and method using HIV-1 antigen SEQ ID NO:13, classified in Class 424, subclass 85.6.

XIV. Claims 1-16, 21, 25-37, 42, 46-69, drawn to a composition and method using HIV-1 antigen SEQ ID NO:14, classified in Class 424, subclass 85.6.

XV. Claims 1-15, 17, 25-36, 38, 46-65, and 67-69, drawn to influenza antigens, classified in Class 424, subclass 85.6.

XVI. Claims 1-15, 18, 25-36, 39, 46-65, and 67-69, drawn to rotavirus antigens, classified in Class 424, subclass 85.6.

XVII. Claims 1-14, 19, 25-35, 40, 46-65, and 67-69, drawn to pathogenic bacterium or protozoan, classified in Class 424, subclass 85.6.

XVIII. Claims 1-15, 20, 25-35, 41, 46-65, and 67-69, drawn to tumor-associated antigens, classified in Class 424, subclass 85.6.

The inventions are distinct, each from the other because of the following reasons:

The inventions of each of the groups encompass patentably distinct antigens that differ from each other as they are derived from very different sources and would effect different diseases.

Each sequence is different and is considered to be a separate, distinct invention. The classification of the individual groups is not dispositive of their similarity or distinctness; it is merely a convenience for the Office. The search for each group is not coextensive with the other groups and would be an undue burden on the Office to search all of the groups.

Because these inventions are distinct for the reasons given above and have acquired separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

Papers related this application may be submitted to Group 1648 by facsimile transmission. Papers should be faxed to Group 1648 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG (November 15, 1989).

The Group 1648 Fax numbers are: (703) 308-4242 and (703) 305-3014.

Unofficial communications may be faxed to: (703) 308-4426.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Stucker whose telephone number is (703) 308-4237. The examiner can normally be reached Monday to Thursday from 7:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel, can be reached on (703) 308-4027.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.



JEFFREY STUCKER
PRIMARY EXAMINER